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Hubert Groll

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BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
100 BOSCH BOULEVARD  
NEW BERN, NC 28562

EXAMINER

SMITH, NATASHA N

ART UNIT

PAPER NUMBER

4132

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/539,862	<b>Applicant(s)</b> GROLL ET AL.	
	<b>Examiner</b> NATASHA SMITH	<b>Art Unit</b> 4132	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-16 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>17JUN2005</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: Applicant has made reference to specific claim numbers within the specification section of the disclosure, which claims are cancelled. Therefore, the references should be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 10: It is not clear whether the valve circuit necessarily must be a closed circuit in order to meet the claim limitations

5. Regarding claim 14: Claim elements "means for retaining crockery that it is to be washed" (line 2) and "means for heating the washing liquid" (line 6) are means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed inventions.

6. Regarding claim 16: Claim element "means for manually switching the operation" (line 2) is a means (or step) plus function limitation that invokes 35 U.S.C.

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112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed invention.

7. Applicant is required to:

(a) Amend the claim so that the claim limitations will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132 (a)).

8. If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132 (a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75 (d) and MPEP 2181 and 608.01(o).

9. Regarding claim 15: The claim limitation “means for heating the washing temperature” uses the phrase “means for” but it is modified by some structure, material,

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or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because the claim recites some structure, namely, a container provided with a heating device.

10. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or “step for” is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

11. If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

### ***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 9 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Eberhardt, Jr. et al. (US 4,689,089).

14. Regarding Claim 9: Eberhardt teaches a method for heat control in a washing program of a dishwasher, comprising:

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within a dishwasher having a spray system for spraying liquid onto crockery that has been disposed in the dishwasher (see col. 2, lines 50-52), providing a washing liquid to be eventually sprayed by the spray system, as a washing program is executed onto crockery in a dishwasher (col. 3, lines 64-66);

heating the cleansing liquid to a predetermined temperature in a flow section, via a wash tank equipped with a heater, that is separate from the spray system (see col. 3, line 64- col. 4, line 3) to an extent such that the washing liquid does not substantially impinge on crockery in the dishwasher as it is being heated in the flow section, whereupon the washing liquid is heated without substantially wetting crockery in the dishwasher (col. 4, lines 27-29, 39-41); and

after washing liquid has been heated to the predetermined temperature, delivering the washing liquid into contact with crockery in the dishwasher (col. 4, lines 66-67), whereupon crockery in the dishwasher that essentially has not been heated is inherently heated by the washing liquid that is heated by the heater.

15. Regarding claim 13: Eberhardt teaches the elements of claim 9, as explained above. Eberhardt also teaches the step of heating the washing liquid to a predetermined temperature in a flow section by heating the washing liquid to a specific temperature in a preheating container, via a wash tank equipped with a heater (col. 4, line 27-37). The heater in the wash tank is regulated to heat the water to a first temperature so that when the wash cycle begins, the wash water is already at the required temperature (col. 4, line 29-30, 39-41).

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16. Regarding claim 14: Eberhardt teaches a dishwasher (col. 1, line 7-8)

comprising:

means for retaining crockery that it is to be washed (col. 1, lines 12-14)

a spray system for spraying liquid onto crockery that has been disposed in the dishwasher (col. 2, lines 50-52, Fig. 1), the spray system being operable to spray a washing liquid, as a washing program is executed, onto crockery in the dishwasher (col. 1, lines 17-19) and;

means for heating the washing liquid to a predetermined temperature (col. 4, lines 1-3), the means for heating the washing liquid to a predetermined temperature being separate from the spray system to an extent such that the washing liquid does not substantially impinge on crockery in the dishwasher as it is being heated (col. 4, lines 27-29; Fig. 1); and the spray system being operable to spray the washing liquid onto crockery in the dishwasher after the washing liquid has been heated to the predetermined temperature (col. 4, lines 19-22, 40-41). The crockery in the dishwasher that essentially has not been heated is inherently heated by the washing liquid, since the liquid is heated by the heater.

17. Claim 15 is drawn to the dishwasher according to claim 14, wherein the means for heating the washing liquid to a predetermined temperature is a container provided with a heating device.

18. Regarding claim 15: Eberhardt further teaches that the washing liquid is heated in a tank that is equipped with a heater (col. 4, lines 27-28).

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

21. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt (US 4,689,089), and further in view of Peterson (4,936,289).

22. Claim 10 is drawn to the method according to claim 9, wherein the step of heating the washing liquid to a predetermined temperature in a flow section includes heating the washing liquid in flow section embodied separate from the spraying system as a valve circuit controllable by a program system as a preferably substantially closed circuit and circulating the washing liquid in the valve circuit such that the washing liquid



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does not substantially impinge on crockery in the dishwasher as it is being heated in the valve circuit.

23. Regarding claim 10: Eberhardt teaches the elements of claim 9, as explained above. Further, Eberhardt teaches that, the flow section where the wash liquid is heated is operated as a valve circuit, in that it contains a circulating pump which opens and closes to circulate the wash water (see col. 3, line 68- col. 4, line 1). Further, the flow section is controlled by a program control system, via a microprocessor, which receives information from temperature controls placed in the flow section (see col. 6, lines 44-47 and 59-64).

24. Eberhardt does not expressly teach that the flow section circulates the washing liquid as it is being heated, without substantially impinging the dishes.

25. Peterson teaches a hot water system in which the hot water recirculates within a distribution piping system until it is completely hot (col. 9, lines 54-61) and then delivering the hot water to various usage stations within a home or building (col. 5, lines 12-24).

26. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have a flow section embodied as a program-controlled valve circuit which circulates the washing liquid as it is being heated without substantially impinging upon the dishes, as taught by Peterson in the method of Eberhardt, in order to deliver washing liquid that is already at the appropriate temperature for washing the dishes (see Eberhardt, col. 2, lines 41-44).

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27. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt (US 4,689,089) as applied to claim 9 above, and further in view of Helwig, Jr. (US 4,331,484).

28. Claim 11 is drawn to the method according to claim 9, wherein the step of heating the washing liquid to a predetermined temperature in a flow section includes ceasing the heating of the washing liquid at the latest when crockery in the dishwasher has reached the predetermined temperature for the washing liquid.

29. Regarding claim 11: Eberhardt teaches the elements of claim 9, as explained above. Eberhardt does not teach ceasing the heating of the washing liquid at the latest when the crockery has reached the predetermined temperature.

30. Helwig teaches a method for executing a washing program in a dishwasher, in which the tank heaters are turned off once the heated water has been dispensed on the rack of soiled dishes (col. 4, lines 3-11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to cease the heating of the washing liquid by the time the dishes reach the predetermined temperature, as taught by Helwig in the method of Eberhardt, in order to conserve energy used by the heaters, when they are no longer needed (see Helwig, col. 4, lines 14-17).

31. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt (US 4,689,089) as applied to claim 9 above, and further in view of Upadhye et al. (US 6,571,564).

32. Claim 12 is drawn to the method according to claim 9, wherein the step of heating the washing liquid to a predetermined temperature in a flow section includes

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circulating the washing liquid by means of a circulating pump so that the heat distribution inside the washing liquid is substantially homogenous.

33. Regarding claim 12: Eberhardt teaches the elements of claim 9, as explained above. Eberhardt does not teach circulating the washing liquid by means of a circulating pump within the flow section where the washing liquid is being heated.

34. Upadhye teaches a container warmer and cooler that operates as a utility bath with a built-in circulating pump to ensure bath temperature is uniform (see col. 9, line 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply a built-in circulating pump, as taught by Uphadye in the method of Eberhardt, in order to keep all of the washing liquid at a uniform temperature (see Uphadye, col. 9, 54-55).

35. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt (US 4,689,089) as applied to claim 14 above, and further in view of Cushing (US 4,249,090).

36. Claim 16 is drawn to the dishwasher according to claim 14, and further comprising means for manually switching the operation of the means for heating the washing liquid to a predetermined temperature between an on condition in which the means for heating the washing liquid to a predetermined temperature is operable to heat the washing liquid to a predetermined temperature is operable to heat the washing liquid and an off condition in which the means for heating the washing liquid to a predetermined temperature does not heat the washing liquid.

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37. Regarding claim 16: Eberhardt teaches the elements of claim 14, as explained above. Eberhardt does not teach manually switching the operation of the heating means between an on and off condition.

38. Cushing teaches a switch arrangement to provide means for manually switching the operation of a wash program/ cycle of a dishwasher between an on and off condition (see col. 1, lines 12-14, 32-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to apply a means for manually switching the operation on and off, as taught by Cushing in the method of Eberhardt, according to suit the needs of the user and the articles to be cleaned (see Cushing, col. 1, lines 5-14).

### ***Conclusion***

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATASHA SMITH whose telephone number is (571)270-7382. The examiner can normally be reached on Monday-Thursday; 8Am-5PM.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Lavilla can be reached on (571) 272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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41. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Natasha Smith  
20 November 2008

***/Michael La Villa/  
Michael La Villa  
Supervisory Patent Examiner, Art Unit 4132  
24 November 2008***